

estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, room 640 N.C., 1951 Constitution Avenue NW., Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1029-0063) or (1029-0090), Washington, DC 20503.

[59 FR 28169, May 31, 1994]

§ 870.11 Applicability.

The regulations in this part apply to all surface and underground coal mining operations except—

(a) The extraction of coal by a landowner for his own noncommercial use from land owned or leased by him;

(b) The extraction of coal for commercial purposes by surface coal mining operations which affects two acres or less during the life of the mine;

(c) The extraction of coal as an incidental part of Federal, State, or local government-financed highway or other construction;

(d) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the total tonnage of coal and other minerals removed for commercial use or sale

(1) In accordance with part 702 of this chapter for Federal program States and on Indian lands or

(2) In any twelve consecutive months in a State with an approved State program until counterpart regulations pursuant to part 702 of this chapter have been incorporated into the State program and in accordance with such counterpart regulations, thereafter; and

(e) The extraction of less than 250 tons of coal within twelve consecutive months.

[47 FR 28593, June 30, 1982, as amended at 54 FR 52123, Dec. 20, 1989; 54 FR 52123, Dec. 20, 1989]

EFFECTIVE DATE NOTE: At 52 FR 21229, June 4, 1987, in § 870.11 paragraph (b) was suspended insofar as it excepts from the applicability of 30 CFR part 870:

(1) Any surface coal mining operations commencing on or after June 6, 1987; and

(2) Any surface coal mining operations conducted on or after November 8, 1987.

§ 870.12 Reclamation fee.

(a) The operator shall pay a reclamation fee on each ton of coal produced for sale, transfer, or use, including the products of in situ mining.

(b) The fee shall be determined by the weight and value at the time of initial bona fide sale, transfer of ownership, or use by the operator.

(1) The initial bona fide sale, transfer of ownership, or use shall be determined by the first transaction or use of the coal by the operator immediately after it is severed, or removed from a reclaimed coal refuse deposit.

(2) The value of the coal shall be determined F.O.B. mine.

(3) The weight of each ton shall be determined by the actual gross weight of the coal.

(i) Impurities that have not been removed prior to the time of initial bona fide sale, transfer of ownership, or use by the operator, excluding excess moisture for which a reduction has been taken pursuant to § 870.18, shall not be deducted from the gross weight.

(ii) Operators selling coal on a clean coal basis shall retain records that show run-of-mine tonnage, and the basis for the clean coal transaction.

(iii) Insufficient records shall subject the operator to fees based on raw tonnage data.

(c) If the operator combines surface mined coal, including reclaimed coal, with underground mined coal before the coal is weighed for fee purposes, the higher reclamation fee shall apply, unless the operator can substantiate the amount of coal produced by surface mining by acceptable engineering calculations or other reports which the Director may require.

(d) The reclamation fee shall be paid after the end of each calendar quarter beginning with the calendar quarter starting October 1, 1977, and ending September 30, 2004.

[47 FR 28593, June 30, 1982, as amended at 53 FR 19726, May 27, 1988; 59 FR 28169, May 31, 1994]

§ 870.13 Fee computations.

(a) *Surface mining fees.* The fee for anthracite, bituminous, and subbituminous coal, including reclaimed coal, is 35 cents per ton unless the value of such coal is less than \$3.50 per ton, in

which case the fee is 10 percent of the value.

(b) *Underground mining fees.* The fee for anthracite, bituminous, and sub-bituminous coal is 15 cents per ton unless the value of such coal is less than \$1.50 per ton, in which case the fee is 10 percent of the value.

(c) *Surface and underground mining fees for lignite coal.* The fee for lignite coal is 10 cents per ton unless the value of such coal is less than \$5.00 per ton, in which case the fee charged is 2 percent of the value.

(d) *In situ coal mining fees.* The fee for in situ mined coal, except lignite coal, is 15 cents per ton based on Btu's per ton in place equated to the gas produced at the site as certified through analysis by an independent laboratory. The fee for in situ mined lignite is 10 cents per ton based on the Btu's per ton of coal in place equated to the gas produced at the site as certified through analysis by an independent laboratory.

§ 870.14 Determination of percentage-based fees.

(a) If the operator submits a fee based on a percentage of the value of coal, the operator shall include, with his fee and production report, documentation supporting the alleged coal value. Based on this information and any additional documentation; including examination of the operator's books and records, that the Director may require, the Director may accept the valuation submitted by the operator, or may otherwise determine the value of the coal.

(b) If the Director determines that a higher fee shall be paid, the operator shall submit the additional fee together with interest computed under § 870.15(c).

§ 870.15 Reclamation fee payment.

(a) Each operator shall pay the reclamation fee based on calendar quarter tonnage no later than thirty days after the end of each calendar quarter.

(b) Each operator shall use mine report Form OSM-1 (or any approved successor form) to report tonnage of coal sold, used or transferred, as well as the name and address of any person or entity who, in a given quarter, is the

owner of 10 percent or more of the mineral estate for a given permit, and any entity or individual who, in a given quarter, purchases ten percent or more of the production from a given permit during the applicable quarter. If no single mineral owner or purchaser meets the 10 percent rule, then the largest single mineral owner and purchaser shall be reported. If several persons have successively transferred the mineral rights, information shall be provided on the last owner(s) in the chain prior to the permittee, i.e. the person or persons who have granted the permittee the right to extract the coal. At the time of reporting, a submitter may designate such information as confidential.

(c) As of April 1, 1983, delinquent reclamation fee payments are subject to interest at the rate established quarterly by the U.S. Department of the Treasury for use in applying late charges on late payments to the Federal Government, pursuant to Treasury Fiscal Requirements Manual 6-8020.20. The Treasury current value of funds rate is published by the Fiscal Service in the Notices section of the FEDERAL REGISTER. Interest on unpaid reclamation fees shall begin to accrue on the 31st day following the end of the calendar quarter for which the fee payment is owed and will run until the date of payment. OSM will bill delinquent operators on a monthly basis and initiate whatever action is necessary to secure full payment of all fees and interest. All operators who receive a Coal Sales and Reclamation Fee Report (Form OSM-1), including those with zero sales, uses, or transfers, must submit a completed Form OSM-1, as well as any fee payment due. Fee payments postmarked later than thirty days after the calendar quarter for which the fee was owed will be subject to interest.

(d)(1) An operator who owes total quarterly reclamation fees of \$25,000 or more for one or more mines shall:

(i) Use an electronic fund transfer mechanism approved by the U.S. Department of the Treasury;

(ii) Forward its payments by electronic transfer;

(iii) Include the applicable Master Entity No.(s) (Part 1—Block 4 on the